

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

VERNON WAYNE McNEAL,

Plaintiff,

v.

F. LECKIE; A. ERVIN; ROY
CHATHAM, substituted party
for C. CHATHAM, deceased; and
D. VAN LEER;

Defendants.*

No. 2:05-cv-00441-GEB-EFB

**ORDER DENYING EACH DEFENDANT'S
MOTION IN LIMINE**

On February 1, 2016, Defendants filed "Motions in Limine" in which they seek a pretrial order precluding the admission of certain evidence at trial. (Defs.' MILs, ECF No. 249.)

Defendants have not shown that motions nos. 1-3 involve controversies that have sufficient concreteness to justify issuance of in limine rulings. Therefore, these requests are denied.

Defendants seek in motions nos. 4, 5, and 7 to preclude Plaintiff from introducing evidence concerning claims that were adjudicated in Defendants' favor in the Order, (ECF No. 158), which adopted the Magistrate Judge's Findings and Recommendations on certain Defendants' summary judgment motion. (Jan. 18, 2013 F.&R., ECF No. 145). Decision on each of these motions is

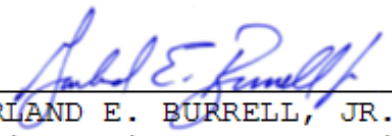
* The caption has been amended to reflect the correct spelling of Defendant Leckie's last name and according to Order substituting Roy Chatham in place of deceased Defendant C. Chatham. (See Order, Jan. 12, 2016, ECF No. 242.)

unnecessary since it has not been shown that the issues involved in the motions are preserved for trial in the February 24, 2015 Final Pretrial Order, (ECF No. 180), the May 22, 2015 Supplement to the Pretrial Order, (ECF No. 206), or the June 1, 2015 Second Supplement to the Pretrial Order, (ECF No. 210).

Defendants seek in motion no. 6 to preclude Plaintiff from "introducing any testimony or evidence that Defendants Chatham or Ervin used excessive force on Plaintiff when applying leg restraints, or by coming down on Plaintiff's back with their knees." (Defs.' MILs 6:7-13.) Defendants argue: "Any claims associated with Defendants' Chatham and Ervin's use of excessive force in violation of the Eighth Amendment associated with the application of leg restraints on Plaintiff or coming down on Plaintiff with their knees in his back, have been dismissed." *Id.* at 6:10-13 (emphasis added).) Defendants are incorrect. The Magistrate Judge's January 18, 2013 Findings and Recommendations, denying these Defendants' summary judgment motion were adopted by the undersigned judge on July 8, 2013. (See Jan. 18, 2013 F.&R. 15:21-16:2; Order Adopting F.&R. 2:10-13, ECF No. 158.)

For the stated reasons, each in limine motion is DENIED.

Dated: September 13, 2016



GARLAND E. BURRELL, JR.
Senior United States District Judge